

UNOFFICIAL COPY

Illinois Anti-Predatory
Lending Database
Program

Doc#: 2234119040 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 12/07/2022 10:14 AM Pg: 1 of 35

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 32-30-208-011-0000**

Address:

Street: 235 Arcadia St

Street line 2:

City: Park Forest

State: IL

ZIP Code: 60466

Lender: Residential Capital Partners Secured Loan Fund XIV, LLC

Borrower: The Brown Agency LLC

Loan / Mortgage Amount: \$97,464.94

This property is located within the program area and is exempt from the requirements of 765 ILCS 7.70 et seq. because it is not owner-occupied.

FIDELITY NATIONAL TITLE OC 22-02-3853

Certificate number: 3E83B82A-DC4A-4902-9FF6-A06A4C0D5519

Execution date: 11/23/2022

UNOFFICIAL COPY

The Brown Agency, LLC,
a(n) Illinois limited liability company
(Mortgagor)

to

Residential Capital Partners Secured Loan Fund XIV, LLC
(Mortgagee)

**MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

Dated as of November 23, 2022

Property Location: 235 Arcadia Street, Park Forest, Cook County, Illinois 60466

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Residential Capital Partners Secured Loan Fund XIV, LLC
3838 Oak Lawn Avenue, Suite 1500
Dallas, Texas 75219
Attention: Loan Administrator

FIDELITY NATIONAL TITLE

0022 023853

UNOFFICIAL COPY

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is executed effective as of November 23, 2022, by The Brown Agency, LLC, a(n) Illinois limited liability company ("Mortgagor"), whose address for notice is 1691 222nd Place, Illinois 60411-4939 Email: brown.aftan@gmail.com, for the benefit of Residential Capital Partners Secured Loan Fund XIV, LLC ("Mortgagee"), whose address for notice is 3838 Oak Lawn Avenue, Suite 1500, Dallas, Texas 75219, Attention: Loan Administrator.

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings:

"Anti-Terrorism Laws": Any and all present or future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limitation, the Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading With the Enemy Act (50 U.S.C.A. App 1 et seq.); the International Emergency Economic Powers Act (50 U.S.C.A. §1701-1706); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated and Blocked Persons" (as published from time to time in various mediums).

"Constituent Party": Any (i) owner, officer, director, shareholder, partner, manager, member or managing member of Mortgagor, as applicable, and (ii) signatory to this Mortgage on Mortgagor's behalf that is an entity or other business organization.

"Financial Statements": All financial statements, balance sheets, income and expense statement, profit and loss statements, cash flow statement, verification of liquidity, statement of contingent liabilities, reconciliations of capital and surplus, changes in financial condition, schedules of sources and applications of funds, schedule of real estate owned and other financial information of Mortgagor and Guarantor (as defined in the Loan Agreement (as hereinafter defined)), heretofore furnished to Mortgagee or required to be furnished to Mortgagee under the terms of the Loan Agreement or any other of the Loan Documents or otherwise reasonably requested by Mortgagee from time to time, which statements shall be prepared in such scope, detail and form as shall be acceptable to Mortgagee, and shall be certified by such parties, and for financial statements of Guarantor and annual statements of Mortgagor, certified by an independent certified public accountant selected by Guarantor which is satisfactory to Mortgagee.

UNOFFICIAL COPY

"Governmental Authority": The United States, the State of Illinois, the County of Cook, the City of Park Forest, or any governmental entity or other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Mortgagor, the Mortgaged Property or the Improvements.

"Indebtedness": (a) The sum of all principal, interest and all other amounts evidenced by, due under or secured by the Loan Documents (including, without limitation, the fundings secured by this Mortgage), together with all other direct, indirect, contingent, primary or secondary indebtedness of any character now or hereafter owing or to be owing by Mortgagor to Mortgagee, regardless of how evidenced or incurred (whether by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise), including amounts advanced to pay all or any portion of any indebtedness now or hereafter secured by the Mortgaged Property, it being contemplated that Mortgagor may become further indebted to Mortgagee in the future, and that Mortgagee may make further advances to or for the benefit or account of Mortgagor that will be secured by this Mortgage, (b) any and all other indebtedness, obligations, and liabilities of any kind or character of Mortgagor to Mortgagee, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, or direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, voluntarily or involuntarily incurred, known or unknown, or originally payable to Mortgagee or to a third party and subsequently acquired by Mortgagee, including, without limitation, (i) late charges, loan fees or charges, and overdraft indebtedness, (ii) costs incurred by Mortgagee in establishing, determining, continuing or defending the validity or priority of any lien securing the payment of any Indebtedness or in pursuing any of its rights or remedies under any Loan Document or in connection with any proceeding involving Mortgagee as a result of any financial accommodation to Mortgagor, (iii) debts, obligations and liabilities for which Mortgagor would otherwise be liable to Mortgagee were it not for the invalidity or unenforceability of them by reason of any Debtor Relief Laws or for any other reason, and (iv) reasonable costs and expenses of attorneys and paralegals, whether any suit or other action is instituted, and court costs if suit or action is instituted, (whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in any Debtor Relief Laws proceeding, in administrative proceedings, in probate proceedings or otherwise), (c) any of the foregoing indebtedness, obligations, and liabilities to Mortgagee of Mortgagor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise; and (d) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions of any of the foregoing, it being contemplated by Mortgagor and Mortgagee that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums. Notwithstanding the foregoing provisions of this definition, this Mortgage and the other Loan Documents shall not secure any such other Indebtedness with respect to which Mortgagee is by applicable law prohibited from obtaining a lien on real estate. Further, the term "Indebtedness" shall not operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt or obligation of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law

UNOFFICIAL COPY

or include any consumer loan to the extent treatment of such loan or extension of credit as part of the Indebtedness would violate any Governmental Requirement.

"Loan": The Loan made to Mortgagor by Mortgagee as evidenced and secured by the Loan Documents.

"Loan Documents": (a) That certain Loan Agreement (the "Loan Agreement") of even date herewith, executed by Mortgagor, Guarantor and Mortgagee, (b) that certain Promissory Note of even date herewith (the "Note"), executed by Mortgagor, payable to the order of Mortgagee, in the stated principal amount of Ninety Seven Thousand Four Hundred Sixty Four Dollars and Ninety Four Cents (\$97,464.94), (c) this Mortgage, (d) the Guaranty (as defined in the Loan Agreement), (e) the PSA (as defined in the Loan Agreement), (f) all other documents now or hereafter executed by Mortgagor, Guarantor, Tenants (as hereinafter defined) or any other person or entity, to evidence, secure or guaranty the payment of all or any portion of the Indebtedness or the performance of all or any portion of the Obligations or otherwise executed by Mortgagor, Guarantor or any other person or entity in connection with the Loan Agreement, Note, this Mortgage or the Loan Documents, and (g) all modifications, restatements, extensions, renewals and replacements of the foregoing.

"Mortgaged Property": (a) the real property more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with any greater estate therein as hereafter may be acquired by Mortgagor (the "Land"), (b) all buildings, garages, houses, walkways, driveways, structures and other improvements, now or at any time situated, placed or constructed upon the Land or any part thereof and any and all additions, alterations, betterments or appurtenances thereto (the "Improvements"), (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land (including, without limitation, any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, transformers, generators, fans, blowers, vents, compressors, vacuum cleaning systems, call systems, boilers, stokers, furnaces, pipes, cleaning call and sprinkler systems, fire extinguishing apparatus and equipment, pumps, water tanks, swimming pools, heating, ventilation, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including, but not limited to stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds), and water, gas, electrical, storm and sanitary sewer lines, facilities and all other utilities whether or not situated in easements, together with all accessions appurtenances, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (the "Fixtures"), (d) all right, title and interest of Mortgagor in and to all goods, accounts, general intangibles, instruments, documents, chattel paper and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the

UNOFFICIAL COPY

planning, construction, development, renovation, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, machinery, money, insurance proceeds, accounts, contract rights, trademarks, building and construction materials, goodwill, chattel paper, documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development or renovation costs (the "Personalty"), (e) all reserves, escrows or impounds required under this Mortgage (including, without limitation, the reserve accounts described in Section 3.14 (together with all cash and instruments held therein, and all interest and other property receivable in respect thereof)) and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, renovation, repair or alteration of the Improvements, and all amendments and modifications thereof (the "Plans"), (g) all leases, ground leases, subleases, licenses, concessions, occupancy agreements, rental contracts, or other agreements (written or oral) now or hereafter existing relating to the use or occupancy of all or any part of the Mortgaged Property, together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Mortgagor of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time (the "Bankruptcy Code")) and all related security and other deposits (collectively, the "Leases") and all of Mortgagor's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a Tenant of any Lease under the Bankruptcy Code, (h) all of the rents, revenues, issues, income, proceeds, profits, and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (the "Rents"), (i) all other agreements, such as construction contracts, architects' agreements, engineers' contracts, utility contracts, maintenance agreements, property management agreements, franchise agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, renovation, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the "Property Agreements"), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, franchises, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (l) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now owned or hereafter acquired by Mortgagor, (m) all mineral, water, oil and gas rights now owned or hereafter acquired by Mortgagor and relating to all or any part of the Mortgaged Property, (n) all trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Mortgaged Property, (o) all of Mortgagor's right, title and interest in and to any awards, remunerations, reimbursements, settlements

UNOFFICIAL COPY

or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures or Personalty, (p) all of Mortgagor's right, title and interest as a declarant or a developer under any and all declarations of covenants, conditions or restrictions, condominium regimes, development agreements or similar agreements affecting the Mortgaged Property (collectively, the "Declarations") and (q) any deposits, pledged funds or collateral accounts held by Mortgagee on behalf of Mortgagor. As used in this Mortgage, the term "Mortgaged Property" shall mean all or, where the context permits or requires, any portion including, without limitation, any reversions and remainders, of the above or any interest therein. The execution and recording of this Mortgage shall serve as any written recorded document as may be required under any of the Declarations to evidence such assignment.

"Obligations": All of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor, Guarantor or any other person or entity to Mortgagee or others (including, without limitation, those set forth in the Loan Documents).

"Permitted Encumbrances": The outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage that are approved by Mortgagee, together with the liens and security interests in favor of Mortgagee created by the Loan Documents, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by this Mortgage, materially and adversely affect the value of the Mortgaged Property, or Mortgagor's intended use thereof, impair the use or operations of the Mortgaged Property or impair Mortgagor's ability to pay its obligations in a timely manner.

"Prohibited Person": Any person or entity that (i) is specifically named or listed in, or is otherwise subject to, any Anti-Terrorism Laws; (ii) is owned or controlled by, or acting for or on behalf of any person or entity specifically named or listed, or otherwise subject to, any Anti-Terrorism Laws; (iii) Mortgagee is prohibited from dealing with, or engaging in any transaction with, pursuant to any Anti-Terrorism Laws; or (iv) is affiliated with any person or entity described in clauses (i) through (iii) of this definition.

"State": The State of Illinois.

"Tenants": All tenants under the Leases, if any.

"UCC": The Uniform Commercial Code of the State or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than the State, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

Section 1.2 Other Terms. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement or the Note, as applicable.

UNOFFICIAL COPY

ARTICLE 2 GRANT

Section 2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor hereby GRANTS, BARGAINS, SELLS, CONVEYS and ASSIGNS to Mortgagee, a lien on the Mortgaged Property; and Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee and their respective successors, substitutes and assigns.

ARTICLE 3 WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows at all times while the Indebtedness remains outstanding:

Section 3.1 Title to Mortgaged Property and Lien of this Instrument. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates valid, enforceable first priority liens and security interests against the Mortgaged Property. Mortgagor warrants that Mortgagor has good, indefeasible and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage.

Section 3.2 First Lien Status. Mortgagor shall preserve and protect the first lien and security interest status of this Mortgage and the other Loan Documents. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or, in Mortgagee's discretion, provide a bond or other security satisfactory to Mortgagee for the payment of such claim.

Section 3.3 Payment and Performance. Mortgagor shall pay the Indebtedness when due under the Loan Documents and shall perform the Obligations in full when they are required to be performed in accordance with the Loan Documents.

Section 3.4 Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the other Loan Documents, and free and clear of any other lien or security interest except such as may be first approved in writing by Mortgagee.

Section 3.5 Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance)

UNOFFICIAL COPY

or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.6 Inspection. Mortgagor shall permit Mortgagee and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.7 Notices by Governmental Authority, Tenant, Fire and Casualty Losses, Etc. Mortgagor shall timely comply with and promptly furnish to Mortgagee, within five (5) days of receipt thereof, true and complete copies of any official notice or claim by any Governmental Authority or any Tenants under Leases pertaining to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee of any fire or other casualty or any notice of taking or eminent domain action or proceeding affecting the Mortgaged Property.

Section 3.8 Condemnation Awards and Insurance Proceeds.

(a) **Condemnation Awards.** Mortgagor assigns all proceeds, awards and compensation for any condemnation or other taking, or any purchase in lieu thereof (a "Condemnation"), to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, Mortgagor shall promptly deposit with Mortgagee (or cause to be deposited with Mortgagee) all of such awards and compensation and Mortgagee may apply the same to the Indebtedness and Obligations secured hereby in such a manner as Mortgagee may elect.

(b) **Insurance Proceeds.**

(i) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of a Casualty or Condemnation, Mortgagor, regardless of whether insurance or condemnation proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, including any and all Necessary Improvements (whether or not the same had been completed prior to such damage or destruction), all to be completed in accordance with applicable law.

(ii) Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly, and

UNOFFICIAL COPY

Mortgagee may apply the same to the Indebtedness and Obligations secured hereby in such a manner as Mortgagee may elect.

(iii) If Mortgagee elects (in Mortgagee's sole and absolute discretion) to make insurance proceeds available to restore the Mortgaged Property, such insurance proceeds applied to restoration will be disbursed on receipt of reasonably satisfactory plans and specifications, contracts and subcontracts, schedules, budgets, lien waivers and architects' certificates, and otherwise in accordance with prudent commercial construction lending practices for construction loan advances (including appropriate retainages to ensure that all work is completed in a workmanlike manner).

Section 3.9 Transfer or Encumbrance of Mortgaged Property.

(a) Without the prior written consent of Mortgagee,

(i) neither Mortgagor nor any other person or entity having an ownership or beneficial interest in Mortgagor, as determined by Mortgagee in its sole and absolute discretion, shall (A) directly or indirectly sell, transfer, convey, mortgage, pledge, or assign any interest in the Mortgaged Property or any part thereof (including any partnership, membership, or any other ownership interest in Mortgagor); (B) further encumber, alienate, grant a lien or grant any other interest in the Mortgaged Property or any part thereof (including any partnership, membership or other ownership interest in Mortgagor), whether voluntarily or involuntarily; (C) enter into any easement or other agreement granting rights in or restricting the use, development, renovation or operation of the Mortgaged Property; or (D) directly or indirectly sell, transfer, convey, mortgage, pledge or assign any of the ownership interest in any members or managers of Mortgagor;

(ii) no new partner, member, manager, shareholder, director, general partner, member, or limited partner having the ability to control the affairs of Mortgagor shall be admitted to or created in Mortgagor (nor shall any existing general partner, member, manager, shareholder or member or limited partner withdraw from Mortgagor), and no change in Mortgagor's organizational documents relating to control over Mortgagor and/or the Mortgaged Property shall be effected; and

(iii) no transfer shall be permitted which would cause the current ownership, management and control of Mortgagor to change, would cause Guarantor, either directly or through entities wholly owned by it, to own less than one hundred percent (100%) of the ownership and beneficial interest in Mortgagor, its members and the Mortgaged Property, or would cause Guarantor not to have the power to directly control the affairs of Mortgagor.

(b) As used in this Section 3.9, "transfer" shall include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a

UNOFFICIAL COPY

substantial part of the Mortgaged Property or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of any ownership or beneficial interest in any member or manager of Mortgagor that is a partnership; (iv) the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of any voting stock in any member or manager of Mortgagor that is a corporation; and (v) the sale, transfer, conveyance, mortgage, pledge, or assignment of any ownership or beneficial interest in any member or manager of Mortgagor that is a limited liability company. "Transfer" is specifically intended to include any pledge or assignment, directly or indirectly, of a controlling interest in Mortgagor or its general partner, controlling member, manager or controlling limited partner for purposes of securing so-called "mezzanine" indebtedness to such transferor.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Indebtedness immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property or any interest in Mortgagor shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this paragraph shall be null and void and of no force and effect.

Section 3.10 Insurance. Mortgagor shall maintain in full force until full payment of the Indebtedness such insurance on the Mortgaged Property as is satisfactory in all respects to Mortgagee, including, without limitation:

(a) A physical damage hazard insurance policy, which shall include coverage therein for "completion and/or premises occupancy" and law and ordinance coverage. The amount of insurance coverage shall be that which is required to prevent the application of any insurance policy co-insurance contribution on any loss, without deduction for depreciation, but in no event less than the greater of (i) the full-face amount of the Loan, and (ii) the replacement value of the Mortgaged Property. In addition, coverage shall not be less than that encompassed by "fire, extended coverage, vandalism and malicious mischief"; perils broadened to include the so called "all risk of physical loss". The policy shall contain a soft cost and an agreed value endorsement;

(b) Use and occupancy insurance covering either rental income or business interruption with coverage in an amount not less than twelve (12) months anticipated gross rental income or gross business earnings, whichever may be applicable;

UNOFFICIAL COPY

(c) Commercial general liability insurance covering Mortgagor, in such amounts as Mortgagee may require, but in any event not less than One Million and No/100 Dollars (\$1,000,000.00) bodily injury and/or property damage liability per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate; and

(d) Worker's compensation insurance in accordance with the applicable requirements of law.

Mortgagee reserves the right herein, when it deems necessary, to require additional physical damage hazard insurance such as, but not limited to: (a) flood, including surface waters; (b) earthquake, including subsidence; (c) collapse due to faulty construction and/or error design and/or faulty workmanship; and (d) contingent liability from the operation of any building laws pertaining to non-conforming property. Mortgagee may require Mortgagor to pay, in connection with this Loan, the cost of any flood zone determination, certification and tracking services, including subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Mortgagor shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Mortgagor.

Casualty and business interruption or rental insurance policies shall name Mortgagee as mortgagee under New York (or equivalent, in other areas) long form noncontributory endorsement and evidenced by the delivery of the original or certified copy of the policy (or insurance certificate) to Mortgagee and shall name Mortgagee as an additional insured and loss payee. Liability and worker's compensation insurance shall be evidenced by a certificate of insurance issued to Mortgagee. All insurance required herein shall be issued by responsible carriers acceptable to Mortgagee and guarantee at least fifteen (15) days' prior written notice to Mortgagee of cancellation, non-renewal or material change.

For purposes of this section, the pronoun "you" shall refer to Mortgagor and the pronoun "we" shall refer to Mortgagee. Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you or a Tenant have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Section 3.11 Notification of Adverse Changes. Mortgagor shall promptly notify Mortgagee of the occurrence of any event or condition which, if not remedied, would result in a material, adverse change to the financial condition of Mortgagor or would materially and adversely affect the value of the Mortgaged Property or any portion thereof.

UNOFFICIAL COPY

Section 3.12 Indemnification. MORTGAGOR AGREES TO INDEMNIFY, DEFEND AND HOLD MORTGAGEE HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, CHARGES, ACTIONS, SUITS, PROCEEDINGS, LAWSUITS, OBLIGATIONS, LIABILITIES, FINES, PENALTIES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES INCURRED BY MORTGAGEE, ALLEGED BY OR IN FAVOR OF MORTGAGOR OR ANY PRINCIPAL, PARTNER, STOCKHOLDER, OFFICER, DIRECTOR, EMPLOYEE OR AGENT THEREOF, OR BY OR IN FAVOR OF ANY BROKER, REALTOR, AGENT OR OTHER PARTY CLAIMING BROKERAGE COMMISSIONS OR FINDER'S FEES IN CONNECTION WITH THE LOAN (OTHER THAN FOR CLAIMS FOR COMMISSIONS OR FEES CLAIMED BY PERSONS OR PARTIES EMPLOYED OR ENGAGED BY MORTGAGEE), OR IN CONNECTION WITH MAKING OR COLLECTING THE LOAN OR ENFORCING THE LOAN DOCUMENTS. MORTGAGOR SHALL FURTHER INDEMNIFY MORTGAGEE AND HOLD MORTGAGEE HARMLESS FOR, FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING ANY AND ALL TAXES AND SPECIAL ASSESSMENTS LEVIED AGAINST THE MORTGAGED PROPERTY OR ANY IMPROVEMENTS, FIXTURES, OR PERSONAL PROPERTY LOCATED THEREON), OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, CLAIMS, COSTS, EXPENSES, AND DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST MORTGAGEE IN ANY WAY RELATING TO, OR ARISING OUT OF, THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR THE CONSTRUCTION AND/OR OPERATION OF THE MORTGAGED PROPERTY, TO THE EXTENT THAT ANY SUCH INDEMNIFIED LIABILITIES RESULT, DIRECTLY OR INDIRECTLY, FROM ANY CLAIMS MADE OR ACTIONS, SUITS, OR PROCEEDINGS COMMENCED BY OR ON BEHALF OF ANY PERSON OR ENTITY OTHER THAN MORTGAGEE. THE OBLIGATIONS AND PROVISIONS OF THIS PARAGRAPH SHALL CONTINUE AND REMAIN IN FULL FORCE AND EFFECT AFTER THE LOAN AND OTHER OBLIGATIONS OF MORTGAGOR UNDER THIS MORTGAGE AND UNDER THE OTHER LOAN DOCUMENTS HAVE BEEN PAID OR DISCHARGED IN FULL AND SHALL SURVIVE THE TERMINATION OF THIS MORTGAGE AND THE REPAYMENT OF THE LOAN. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS MORTGAGE INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, WOULD INCLUDE INDEMNIFICATION BY MORTGAGOR OF MORTGAGEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF MORTGAGEE'S OWN NEGLIGENCE.

Section 3.13 Payment of Taxes. Mortgagor shall pay or cause to be paid before delinquent, all taxes and assessments of every character in respect of the Mortgaged Property, or any part thereof, and promptly thereafter deliver to Mortgagee evidence satisfactory to Mortgagee of the timely payment of such taxes and assessments.

Section 3.14 Tax and Insurance Impounds. At Mortgagee's option and upon its demand, Mortgagee shall establish a reserve account and Mortgagor shall deposit on the date of such request and on each monthly anniversary thereafter, with respect to property taxes and assessments an amount sufficient as determined by Mortgagee to enable payment of one (1) full

UNOFFICIAL COPY

year of property taxes and assessments thirty (30) days prior to their due date and with respect to insurance premiums, an amount sufficient as determined by Mortgagee to enable payment of up to one (1) full year of insurance premiums thirty (30) days prior to their due date. Mortgagee may re-calculate the foregoing amounts from time to time to assure that funds are reserved in amounts sufficient to enable the payment of property taxes and assessments and insurance premiums thirty (30) days prior to their respective due dates). Mortgagee shall make payments of property taxes and assessments and insurance premiums out of such account before the same shall be delinquent to the extent that there are funds available therein and Mortgagee has received appropriate documentation to establish the amount(s) due and the due date(s) as and when provided above. Each of the reserve accounts described herein shall be a custodial account established by Mortgagee, shall not constitute a trust fund, and may be commingled with other money held by Mortgagee or its servicer. Mortgagor acknowledges and agrees that such accounts are subject to the sole dominion, control and discretion of Mortgagee, its authorized agents or designees, subject to the terms hereof. Mortgagor shall not have the right to make any withdrawal from any such account. Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred, any amounts deposited into or remaining in any such account may be applied in any manner as Mortgagee may elect in Mortgagee's discretion (including, without limitation, to the payment of any of the Indebtedness). Mortgagor shall not be entitled to any earnings or interest on funds deposited into any of such accounts. If Mortgagee reasonably determines that any amounts paid by Mortgagor are insufficient for the payment of such taxes, assessments, levies, charges and/or insurance premiums, Mortgagee shall notify Mortgagor of the increased amounts required to pay all amounts when due, whereupon Mortgagor shall pay to Mortgagee within thirty (30) days thereafter the additional amount as stated in Mortgagee's notice. Upon an Event of Default, Mortgagee may apply all or any part of such deposits to the payment of any of the Indebtedness.

Section 3.15 Hazardous Materials Representation and Warranties. Mortgagor hereby represents, warrants and covenants to Mortgagee as follows, at all times while the Indebtedness remains outstanding:

(a) **Hazardous Materials.** The Land and Improvements are not and have not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances", "hazardous wastes", "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances or regulations (collectively, the "Hazardous Materials"). "Hazardous Materials" shall include, but is not limited to, any and all hazardous or toxic substances, materials or waste as defined by or listed under any of the current or future Hazardous Materials Laws, but shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the Mortgaged Property which are used and stored in compliance with all applicable Hazardous Materials Laws.

(b) **Hazardous Materials Laws.** The Land and Improvements are in compliance with all federal, state and local law (whether imposed by statute, ordinance, rule, regulation, administrative or judicial order, or common law applicable to the Land

UNOFFICIAL COPY

and Improvements), including all applicable laws of the state in which the Land and Improvements is located, now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or hazardous, toxic or dangerous product, material or substance, ordinances and regulations relating to Hazardous Materials ("Hazardous Materials Laws"), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; such laws (A) governing or regulating (i) the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control release discharge of, or exposure to, any hazardous, toxic or dangerous product, material or substance, or (ii) the transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of such property, or (B) requiring notification or disclosure of releases of hazardous, toxic or dangerous product, material or substance or other environmental conditions whether or not in connection with a transfer of title to or interest in property; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) **Hazardous Materials Claims.** There are no claims or actions ("Hazardous Materials Claims") pending or threatened against Mortgagee or the Mortgaged Property by any Governmental Authority or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(d) **Storage Tanks.** No storage tanks (including, without limitation, petroleum or heating oil storage tanks), underground or above-ground, are present on or under the Land or have been on or under the Land.

(e) **Asbestos.** No asbestos or asbestos-containing materials have been, or shall be, installed, used, incorporated into or disposed of on any portion of the Mortgaged Property at any time except to the extent disclosed to and approved by Mortgagee.

(f) **PCBs.** There are no polychlorinated biphenyls (PCBs) located upon or in any portion of the Mortgaged Property.

(g) **No Hazardous Materials.** There are no Hazardous Materials located upon or in any portion of the Mortgaged Property and no Hazardous Materials have ever been used on, from or affecting any portion of the Mortgaged Property in any manner which violates any Governmental Requirements.

(h) **Compliance.** All portions of the Mortgaged Property are currently, and at all times in the past have been, in compliance with all Governmental Requirements.

UNOFFICIAL COPY

(i) **Other Conditions.** There are no conditions (with regard to any portion of the Mortgaged Property, any adjacent property, any other property or otherwise) which exist or which are likely to exist in the foreseeable future, which would or might cause any portion of the Mortgaged Property to fail to be in compliance with all Governmental Requirements.

(j) **Permits.** No permits, licenses or approvals are required (relating to Hazardous Materials) under any Governmental Requirements relative to any portion of the Mortgaged Property.

Section 2.16 Hazardous Materials Covenants.

(a) **No Hazardous Activities.** Mortgagor shall not cause or permit the Land or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials except in compliance with all applicable Hazardous Materials Laws.

(b) **Compliance.** Mortgagor shall comply (and cause all Tenants to comply) and cause the Land and Improvements to comply with all Hazardous Materials Laws.

(c) **Notices.** Mortgagor agrees to (i) give notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any Hazardous Materials on any portion of the Mortgaged Property or of any Hazardous Materials contamination with a full description thereof; (ii) promptly, at Mortgagor's sole cost and expenses, comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials contamination and provide Mortgagee with satisfactory evidence of such compliance; and (iii) provide the Mortgagee, within thirty (30) days after demand by Mortgagee, with a bond, letter of credit or similar financial assurance evidencing, to Mortgagee's satisfaction, that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials contamination and discharging any assessments which may be established on any portion of the Property as a result thereof.

(d) **Remedial Action.** In response to the presence of any Hazardous Materials on, under or about the Land or Improvements, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

(e) **Liens.** Mortgagor shall not cause or suffer any liens to be recorded against any portion of the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about any portion of the Property, including any state, federal or local so-called "Superfund" lien relating to such matters.

Section 3.17 Representations, Warranties and Covenants Regarding Leases. Mortgagor shall not enter into any Leases without the prior consent of Mortgagee (which consent

UNOFFICIAL COPY

may be granted or withheld in Mortgagee's sole and absolute discretion). Any Leases entered into without Mortgagee's prior consent shall be void and of no force and effect. Mortgagor represents and warrants that the Mortgaged Property is not subject to any Leases as of the date hereof or otherwise occupied.

Section 3.18 Compliance with Laws; Utilities; Access. Mortgagor shall, or shall cause the Tenants under the Leases, to promptly comply with all governmental laws, ordinances and regulations applicable to Mortgagor and the Mortgaged Property and Mortgagor's use and operation of the Mortgaged Property. Mortgagor shall cause the Mortgaged Property to at all times have access (a) to and from public streets and roads adequate for its intended use, and (b) to all utility services, in sufficient size and capacity, necessary for the operation of the Mortgaged Property for its intended use are available at the boundaries of the Mortgaged Property, consisting of water supply, storm and sanitary sewer facilities, electric, gas, and telephone facilities.

Section 3.19 Maintenance of Mortgaged Property. Mortgagor shall, or shall cause the Tenants under the Leases to, at all times maintain, preserve and keep the Mortgaged Property in good repair and condition and from time to time make all necessary and proper repairs and replacements and not commit or permit any waste on or of the Mortgaged Property and not do anything to the Mortgaged Property that may materially impair its value.

Section 3.20 Financial Statements. Mortgagor shall furnish to Mortgagee and cause any guarantors to promptly furnish to Mortgagee such Financial Statements and reports relating to Mortgagor and each guarantor as Mortgagee may request in accordance with the terms and conditions set forth in the Loan Agreement.

Section 3.21 Management of the Mortgaged Property. Mortgagor shall enter into management agreements only in accordance with the terms of the Loan Agreement.

Section 3.22 Costs and Expenses. Mortgagor shall promptly pay Mortgagee upon demand all costs and expenses incurred by Mortgagee in connection with: (a) the preparation of this Mortgage and all other Loan Documents and the closing of the Loan and any amendment, supplement, or modification of, or any waiver or consent under or with respect to, any of the Loan Documents; and (b) the enforcement or satisfaction by Mortgagee of any of Mortgagor's obligations under this Mortgage or the other Loan Documents. For all purposes of this Mortgage, Mortgagee's costs and expenses shall include, without limitation, those fees and costs set forth in this Section 3.22, the Loan Fee, all appraisal fees, tax monitoring fees, engineering and inspection fees (including, without limitation, the costs and expenses of the inspection of the Mortgaged Property by the Inspecting Party), legal fees, environmental consultant fees and the cost to Mortgagee of any title insurance premiums and title surveys. Mortgagor recognizes and agrees that formal written appraisals of the Mortgaged Property by a licensed independent appraiser may be required by Mortgagee's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that Mortgagee may, at its option, require inspection of the Mortgaged Property. If any of the services described above are provided by an employee of Mortgagee, Mortgagee's cost and expenses for such services shall be calculated in accordance with Mortgagee's standard charge for such services.

Section 3.23 Anti-Terrorism Laws.

UNOFFICIAL COPY

(a) Without limiting the requirements of Section 3.18 hereof, Mortgagor has taken and shall continue to take until the Indebtedness is fully repaid and all Obligations are performed in full, such measures as are required by any and all Anti-Terrorism Laws to assure Mortgagee that the funds invested in Mortgagor and/or used to make payments of the Indebtedness and/or the Obligations are derived from (a) transactions and sources that do not violate any Anti-Terrorism Laws nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction from which they originated; and (b) permissible sources under Anti-Terrorism Laws or, to the extent such funds originate outside the United States, under the laws of the jurisdiction from which they originated. If Mortgagee reasonably believes that Mortgagor, Guarantor, Constituent Party or any other affiliate or related person or entity to the foregoing parties may have breached any of the representations, warranties or covenants set forth in this Mortgage or the other Loan Documents relating to any Anti-Terrorism Laws or the identity of any person or entity as a Prohibited Person, then, Mortgagee shall have the right, with or without notice to Mortgagor, to (1) notify the appropriate Governmental Authority and to take such action as such Governmental Authority or applicable Anti-Terrorism Law may direct; (2) withhold advances and segregate the assets constituting the Indebtedness or any of Mortgagor's funds or assets deposited with or otherwise controlled by Mortgagee pursuant to the Loan Documents; (3) decline any payment (or deposit such payment with an appropriate United States Governmental Authority or court) or decline any prepayment or consent request; and/or (4) declare an Event of Default and immediately accelerate the Indebtedness in connection therewith. Mortgagor agrees that none of Mortgagor, Guarantor, Constituent Party or any other affiliate or related person or entity to the foregoing parties will assert any claim (and hereby waives, for itself and on behalf of the foregoing parties any claim it may now or hereafter have) against Mortgagee or any of its affiliates, successors, assigns, representatives or agents for any form of damages as a result of the foregoing actions, regardless of whether or not Mortgagee's reasonable belief is ultimately demonstrated to be accurate or not.

(b) Mortgagor acknowledges and understands that Mortgagee may be required, and hereby authorizes Mortgagee to obtain, verify and record information that identifies Mortgagor, Guarantor, Constituent Party and any other affiliate or related person or entity to the foregoing parties, which information may include the names and addresses of such parties and other information that will allow Mortgagee to identify such parties in accordance with the requirements of certain Anti-Terrorism Laws.

(c) None of Mortgagor, Guarantor, Constituent Party nor any person owning any interest in Mortgagor, Guarantor or Constituent Party (i) is a Prohibited Person, or (ii) has violated any Anti-Terrorism Laws.

(d) None of the funds of Mortgagor, any Constituent Party or Guarantor have been derived from any activity in violation of or prohibited by any Anti-Terrorism Laws.

(e) If at any time Mortgagor obtains knowledge that Mortgagor, any Constituent Party or Guarantor is, or becomes, a Prohibited Person or are indicted,

UNOFFICIAL COPY

arraigned or custodially detained on charges or allegations involving or relating to any Anti-Terrorism Laws, Mortgagor shall immediately notify Mortgagee of same.

(f) Mortgagor shall promptly deliver, or shall cause any Guarantor or Constituent Party to promptly deliver, to Mortgagee any reasonable evidence (including any requested certifications) confirming compliance by all such parties with all Anti-Terrorism Laws and confirming that none of such parties (nor any person owning an interest in Mortgagor, Guarantor or any Constituent Party) is a Prohibited Person.

Section 3.24 No Homestead; Use of Loan Proceeds. Mortgagor is acquiring the Mortgaged Property and the Loan solely for a business purposes. The Mortgaged Property does not and will not constitute the residential or business homestead of any guarantor or co-maker of the Loan. No portion of the Loan shall be used for personal, family or household purposes. Mortgagor will not permit the Mortgaged Property to be used as a residential homestead or for any other personal, family, household or agricultural use.

ARTICLE 4 DEFAULT AND FORECLOSURE

Section 4.1 Events of Default. The term "Event of Default," as used herein, shall mean the occurrence of any one or more of the following events (including the passage of time, if any, specified therefor) (provided that if any such event occurs and Mortgagee subsequently agrees in writing that it will not exercise any rights hereunder as a result thereof, the occurrence of such event shall no longer be deemed an "Event of Default" hereunder insofar as the state of facts giving rise to such event is concerned, but the same shall not operate as or be deemed to be a waiver with respect to any identical or similar state of facts in existence or occurring theretofore or thereafter):

(a) the failure or refusal of Mortgagor to pay (i) the Indebtedness, or any part thereof, as the same becomes due in accordance with the terms of the Note (including, without limitation, all or any part of the monthly installments of accrued interest on the Note) or other Loan Documents as and when the same become due and payable, or (ii) the unpaid principal balance and all accrued but unpaid interest on the Maturity Date (as defined in the Note); or

(b) the failure or refusal of Mortgagor to pay any amounts due and owing under the Loan Documents (whether to Mortgagee or otherwise) (other than the payments covered by Section 4.1(a) hereof) as the same become due in accordance with the terms of the Loan Documents (including, without limitation, the Loan Fee (as defined in the Note)); or

(c) the failure or refusal of Mortgagor to punctually and properly to perform, observe and comply with any covenant, agreement or condition (other than covenants or agreements to pay the indebtedness described in subparagraphs (a) and (b) above) contained in any of the Loan Documents; or

(d) the occurrence of an "Event of Default" as that term is defined in the Loan Agreement or any other Loan Document; or

UNOFFICIAL COPY

(e) Mortgagor or Guarantor defaults under any other agreement that Mortgagor or Guarantor has with Mortgagee; or

(f) a lien (other than an inchoate lien for taxes) for the performance of work or the supply of materials or any other lien, whether for federal, state or local taxes or otherwise is filed against the Mortgaged Property or any part thereof and remains unsatisfied, uncontested or unbonded (in a manner approved in writing by Mortgagee); or

(g) the failure for any reason of the liens created by this Mortgage to constitute the only first and prior liens against the entire Mortgaged Property, subject only to the Permitted Encumbrances; or

(h) If any one or more of the Loan Documents is terminated, revoked, or otherwise rendered void or unenforceable, in any case, without Mortgagee's prior written consent; or

(i) the sale, encumbrance or other unauthorized transfer of all or any portion of the Mortgaged Property without Mortgagee's prior written consent, including, without limitation, a "transfer" in violation of Section 3.9 hereof; or

(j) except as permitted in this Mortgage and the Loan Documents, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior consent of the Mortgagee; or

(k) If any condemnation, eminent domain or other taking proceedings shall have commenced or been threatened against the Mortgaged Property (or a portion thereof) which Mortgagee, in its exclusive judgment, believes will materially and adversely affect Mortgagor's ability to perform its obligations hereunder or the value of the Mortgaged Property; or

(l) a material adverse change in the financial condition of the Mortgagor, Guarantor or the Mortgaged Property or the assertion of a claim against Mortgagor, Guarantor or the Mortgaged Property that could materially adversely affect Mortgagor's, Guarantor's or the Mortgaged Property's financial condition, including, without limitation, (i) a lawsuit or other proceeding filed against Mortgagor or Guarantor that Mortgagee determines could materially impair the ability of such Mortgagor or Guarantor to pay the indebtedness or perform the obligations evidenced by the Note and the Loan Documents, (ii) the rendering of one or more judgments or decrees for the payment of money against Mortgagor or Guarantor; or (iii) the seizure, garnishment, execution, attachment, sequestration or other similar writ or levy against all or any part of the Mortgaged Property

(m) (i) Mortgagor or Guarantor becomes insolvent within the meaning of any Debtor Relief Laws, admits in writing its or their inability to pay or otherwise fail to pay its or their debts generally as they become due, makes an assignment for the benefit of creditors or files, commences or consents to the filing of a petition in bankruptcy or for protection under any Debtor Relief Laws or the commencement of any proceeding under

UNOFFICIAL COPY

the Federal Bankruptcy Code or any other federal or state law, now or hereafter in effect, relating to the reorganization of Mortgagor or Guarantor or the arrangement or rearrangement or readjustment of the debts of Mortgagor or Guarantor or having the effect of enjoining or staying the exercise of rights or remedies by creditors, it being understood that the filing against Mortgagor of such a petition by a partner, member, manager, officer or stockholder of Mortgagor or Guarantor shall be deemed to be a filing with the consent of such party, files an answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it, by any other person or entity under Debtor Relief Laws, or solicits or causes to be solicited, or otherwise colludes with, petitioning creditors for any involuntary petition from any person or entity, or contests or opposes any motion made by Mortgagee to obtain relief from the automatic stay or seeking to reinstate the automatic stay in the event of any proceeding under any Debtor Relief Laws; (ii) a receiver, liquidator or trustee of Mortgagor, Guarantor or of any substantial portion of properties owned by Mortgagor or Guarantor shall be appointed; (iii) a petition in bankruptcy or for reorganization or for protection under any Debtor Relief Laws shall have been filed against Mortgagor or Guarantor; or (iv) an attachment or sequestration of or relating to any substantial portion of any assets of Mortgagor or Guarantor and the same is not discharged; or

(n) The nonpayment when due of any indebtedness owed by Mortgagor (whether to Mortgagee or to parties other than Mortgagee), or the nonpayment when due of any indebtedness owed by Guarantor to parties (whether to Mortgagee or to parties other than Mortgagee), or the occurrence of any event under any document evidencing, securing or executed in connection with any such indebtedness which could give the holder thereof the right to declare such indebtedness due prior to its scheduled maturity; or

(o) The discovery by Mortgagee that any statement, representation or warranty made by Mortgagor or Guarantor to Mortgagee in any of the Loan Documents or in any other certificate or document furnished to Mortgagee in connection with the Loan or in furtherance of the requirements of any of the Loan Documents shall be incorrect, misleading or erroneous at the time when made or at the time when reaffirmed or deemed reaffirmed by the terms of the Loan Documents or has become incorrect, misleading or erroneous; or

(p) If Mortgagor or Guarantor (i) ceases to do business or terminates its business as presently conducted for any reason whatsoever, (ii) fails to maintain its status as validly existing and in good standing under the laws of the state of its organization, with all requisite power and authority to carry on its business as presently conducted, (iii) dissolves, (iv) liquidates, (v) causes, institutes or fails to contest any proceeding for the dissolution or termination of Mortgagor or Guarantor, or (vi) merges or consolidates with or into any other entity; or

(q) If Guarantor dies, purports to revoke its Guaranty or terminate its liability thereunder or otherwise fails or refuses to comply with any terms thereunder or to perform any obligations thereunder or any other default by Guarantor of its obligations under the Guaranty; or

UNOFFICIAL COPY

(r) If the Mortgagor fails to comply with any material requirements of any Governmental Authority; or

(s) If any insurance policy shall lapse, expire or terminate for any reason without a replacement policy being in full force and effect in accordance herewith; or

(t) The Necessary Improvements are not fully completed on or prior to the Final Completion Date, or, in the exclusive judgment of Mortgagee, cannot reasonably be completed on or before the Final Completion Date.

Section 4.2 Remedies. If an Event of Default occurs, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) **Acceleration.** Declare the Indebtedness to be immediately due and payable, without further notice, presentment, protest, notice of intent to accelerate, notice of acceleration, demand or action of any nature whatsoever (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** Enter the Mortgaged Property and take exclusive possession thereof and of all books, records and accounts relating thereto. If Mortgagor (or any party claiming by, through or under Mortgagor) remains in possession of the Mortgaged Property after an Event of Default and without Mortgagee's prior written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor (or any party claiming by, through or under Mortgagor).

(c) **Operation of Mortgaged Property.** Hold, lease, develop, manage, operate or otherwise use the Mortgaged Property (including, without limitation, the completion of construction of the Necessary Improvements (as defined in the Loan Agreement)) upon such terms and conditions as Mortgagee may deem reasonable under the circumstances (making such repairs, alterations, additions and improvements and taking other actions, from time to time, as Mortgagee deems necessary or desirable), and apply all Rents and other amounts collected by Mortgagee in connection therewith in accordance with the provisions of Section 4.8.

(d) **Foreclosure and Sale.** Institute judicial proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; notwithstanding the foregoing, upon default of the Mortgage or the Note, or other obligation secured thereby, Mortgagee shall have the right to sell the Land by power of sale hereby granted pursuant to any statute authorizing nonjudicial foreclosure.

(e) **Receiver.** Make application to a court of competent jurisdiction for, and obtain from such court as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Indebtedness, the appointment of a receiver of the Mortgaged Property, and Mortgagor irrevocably consents

UNOFFICIAL COPY

to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court, and shall apply such Rents in accordance with the provisions of Section 4.8.

(f) **UCC.** Exercise any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing: (i) the right to take possession of the personal property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the personal property, and (ii) request Mortgagor at its expense to assemble the personal property and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the personal property sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor.

(g) **Other.** Exercise all other rights, remedies and recourses granted under the Loan Documents or otherwise available at law or in equity (including foreclosure of this Mortgage as though it were a mortgage, an action for specific performance of any covenant contained in the Loan Documents, or a judgment on the Note either before, during or after any proceeding to enforce this Mortgage). Mortgagee shall have the right at any time and from time to time, without notice to Mortgagor (any such notice being expressly waived), to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other indebtedness at any time owing by Mortgagee to or for the credit or the account of Mortgagor, against any and all of the indebtedness of Mortgagor evidenced by the Note or the Loan Agreement and/or secured by the Mortgage, irrespective of whether or not Mortgagee shall have made any demand under the Note or any other Loan Document and although such indebtedness may be unmatured. Mortgagee agrees to notify Mortgagor promptly after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Mortgagee under this subsection are in addition to any other rights and remedies (including, without limitation, other rights of set-off) which Mortgagee may have under the Note or the other Loan Documents or otherwise.

Section 4.3 Separate Sales. The Mortgaged Property may be sold in one or more parcels and in such manner and order as Mortgagee, in its sole discretion, may elect; the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

Section 4.4 Remedies Cumulative, Concurrent and Nonexclusive. Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including the UCC), which rights (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Mortgagor or others obligated under the Note and the other Loan Documents, or against the Mortgaged Property, or against any one or more of them, at the sole discretion of Mortgagee, (c) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of them shall not be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No action by Mortgagee in the enforcement of any rights, remedies or

UNOFFICIAL COPY

recourses under the Loan Documents or otherwise at law or equity shall be deemed to cure any Event of Default.

Section 4.5 Release of and/or Resort to Collateral. Mortgagee may release, regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Property, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests created in or evidenced by the Loan Documents or their stature as a first and prior lien and security interest in and to the Mortgaged Property.

Section 4.6 Waiver of Redemption, Notice and Marshalling of Assets. To the fullest extent permitted by law, Mortgagor hereby irrevocably and unconditionally waives and releases (a) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment, (b) all notices of Mortgagee's election to exercise or his actual exercise of any right, remedy or recourse provided for under the Loan Documents, (c) any right to a marshalling of assets or a sale in inverse order of alienation, and (d) the rights of reinstatement and/or redemption provided by Illinois law.

Section 4.7 Discontinuance of Proceedings. If Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon it for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the right, remedy or recourse had never been invoked, but no such discontinuance or abandonment shall waive any Event of Default which may then exist or the right of Mortgagee thereafter to exercise any right, remedy or recourse under the Loan Documents for such Event of Default.

Section 4.8 Application of Proceeds. The proceeds of any sale of, and the Rents and other amounts generated by the holding, leasing, management, operation or other use of the Mortgaged Property, to the extent received by Mortgagee following the exercise of any of its remedies under this Mortgage, shall be applied by Mortgagee (or the receiver, if one is appointed) in the following order unless otherwise required by applicable law:

- (a) to the payment of the reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same, including, without limitation, (i) Mortgagee's and receiver's fees and expenses, (ii) court costs, (iii) attorneys' and accountants' fees and expenses, (iv) costs of advertisement, (v) insurance premiums, (vi) the payment of all ground rent, real estate taxes and assessments, except any taxes, assessments or other charges subject to which the Mortgaged Property shall have been sold, and (vii) the cost and expenses of any Actions (as defined in Section 8.4 hereof) taken;

UNOFFICIAL COPY

(b) to the payment of all amounts (including interest), other than the unpaid principal balance of the Note and accrued but unpaid interest, which may be due to Mortgagee under the Loan Documents;

(c) to the payment of the Indebtedness and performance of the Obligations in such manner and order of preference as Mortgagee in its sole discretion may determine; and

(d) the balance, if any, to the payment of the persons legally entitled thereto.

Section 4.9 Occupancy After Foreclosure. The purchaser at any foreclosure sale pursuant to Section 4.2(d) shall become the legal owner of the Mortgaged Property. All occupants of the Mortgaged Property shall, at the option of such purchaser, become tenants of the purchaser at the foreclosure sale and shall deliver possession thereof to the purchaser upon demand. It shall not be necessary for the purchaser at said sale to bring any action for possession of the Mortgaged Property other than the statutory action of eviction in any court having jurisdiction over the Mortgaged Property.

Section 4.10 Additional Advances and Disbursements; Costs of Enforcement.

(a) If any Event of Default exists, Mortgagee shall have the right, but not the obligation, to cure such Event of Default in the name and on behalf of Mortgagor. All sums advanced and expenses incurred at any time by Mortgagee under this Section 4.10, or otherwise under this Mortgage or any of the other Loan Documents or applicable law, shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the Default Rate (as defined in the Note), and all such sums, together with interest thereon, shall be secured by this Mortgage.

(b) Mortgagor shall pay all expenses (including attorneys' fees and expenses) of or incidental to the perfection and enforcement of this Mortgage and the other Loan Documents, or the enforcement, compromise or settlement of the Indebtedness or any claim under this Mortgage and the other Loan Documents, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise.

Section 4.11 No Mortgagee in Possession. Neither the enforcement of any of the remedies under this Article 4, the assignment of the Rents and Leases under Article 5, the security interests under Article 6, nor any other remedies afforded to Mortgagee under the Loan Documents, at law or in equity shall cause Mortgagee to be deemed or construed to be a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense, or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 4.12 Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Mortgaged Property.

UNOFFICIAL COPY

ARTICLE 5 ASSIGNMENT OF RENTS AND LEASES

Section 5.1 Assignment. Mortgagor hereby presently and unconditionally grants, bargains, conveys, assigns, transfers, and sets over, unto Mortgagee, as security for the repayment of the Indebtedness and performance of the Obligations, and to provide a source of future payment of the Indebtedness, a security interest in, all of Mortgagor's right, title and interest in, to and under: (a) all Leases of the Mortgaged Property or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Mortgaged Property or any portion thereof, whether now existing or entered into after the date hereof, and all amounts payable and all rights and benefits accruing to Mortgagor; and (b) the Rents of the Mortgaged Property, including, without limitation, all amounts payable and all rights and benefits accruing to Mortgagor under the Leases. The term "Leases" shall also include all guarantees of and security for the Tenants' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder.

Section 5.2 Receipt of Rent. Subject to the terms and provisions of Section 5.3, Mortgagor may exercise and enjoy all incidences of the status of a lessor with respect to the Rents, including, without limitation, the right to collect, demand, sue for, attach, levy, recover, and receive the Rents, and to give proper receipts, releases, and acquittances therefor. Mortgagor shall receive all Rents and will apply the Rents so collected in any manner consistent with the Loan Documents. Neither this grant nor the receipt of Rents by Mortgagee (except to the extent, if any, Mortgagee actually receives and applies such Rents to the Indebtedness) shall effect a *pro tanto* payment of the Indebtedness. Rents actually received by Mortgagee shall be applied by Mortgagee as provided in the Section 5.3 below. Mortgagee shall not be deemed to have received Rents or to have applied Rents to the Indebtedness until the money is actually received by Mortgagee at its principal office, or at such other place as Mortgagee shall designate in writing. Mortgagee shall not apply Rents to the Indebtedness after foreclosure or any other transfer of all or any part of the Mortgaged Property to Lender or any third party.

Section 5.3 Collection and Application of Rents. Mortgagor covenants and agrees to receive all Rents in trust for the benefit of Mortgagee to be applied as directed by Mortgagee for the payment and performance of the Indebtedness and any other indebtedness evidenced or secured hereby, and the obligations as set forth in this Mortgage. Upon the occurrence of an Event of Default or an event, which with notice or lapse of time or both may become an Event of Default, Rents shall be paid to Mortgagee and Mortgagee may apply such Rents (a) to the Indebtedness, and/or (b) such other expenses, costs, fees, and obligations as Mortgagee may determine, with the balance of any excess proceeds to be paid to Mortgagor for any period prior to foreclosure or acceptance of a deed in lieu of such foreclosure, and in accordance with the provisions of Section 4.8 hereof upon foreclosure or acceptance of a deed in lieu of such foreclosure. Mortgagee may at any time, and without notice, either in person, by agent, or by receiver to be appointed by a court, enter and take possession of the Mortgaged Property or any part thereof, and in its own name, sue for or otherwise collect the Rents. Mortgagee may (in its sole discretion), upon the occurrence of an Event of Default, deliver a written notice to Mortgagor instructing Mortgagor deliver to Mortgagee all accruing Rents and all Rents that have accrued but are unpaid ("Rent Demand") to Mortgagor. All Rents collected by Mortgagee shall be applied as provided for in

UNOFFICIAL COPY

Section 4.8, provided, however, that if the costs, expenses, and attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents, and the application thereof as set forth above shall not cure or waive any Event of Default or notice of default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Mortgagee, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Mortgagee, of the right, power, and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Mortgagee shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Mortgage, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Mortgagor to Mortgagee. Without impairing its rights hereunder, Mortgagee may, at its option (but without any obligation), at any time and from time to time, release to Mortgagor Rents so received by Mortgagee, or any part thereof. Mortgagee shall not be liable for its failure to collect or its failure to exercise diligence in the collection of Rents, but shall be accountable only for Rents that it shall actually receives.

Section 5.4 Effect of Assignment: The foregoing collateral assignment shall not cause Mortgagee to be: (a) a mortgagee in possession, (b) responsible or liable for the control, care, management or repair of the Mortgaged Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Mortgaged Property by the Tenants under any of the Leases or any other parties; for any dangerous or defective condition of the Mortgaged Property; or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any Tenant, licensee, employee, invitee or other person. Mortgagee shall not directly or indirectly be liable to Mortgagor or any other person as a consequence of: (i) the exercise or failure to exercise by Mortgagee, or any of their respective employees, agents, contractors or subcontractors, any of the rights, remedies, or powers granted to Mortgagee hereunder; or (ii) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor arising under the Leases.

Section 5.5 Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and distinct notwithstanding the union of such estates either in Mortgagor, Mortgagee, any lessee, or any third party purchaser or otherwise.

Section 5.6 Mortgagor's Indemnities. Mortgagor shall indemnify and hold harmless Mortgagee from and against any and all liability, loss, cost, damage, or expense which Mortgagee may incur under or by reason of this assignment, or for any action taken by Mortgagee hereunder, or by reason of or in defense of any and all claims and demands whatsoever which may be asserted against Mortgagee arising out of the Leases or with respect to the Rents. In the event Mortgagee incurs any such liability, loss, cost, damage, or expense, the amount thereof together with all reasonable attorneys fees and interest thereon at the Default Rate shall be payable by Mortgagor

UNOFFICIAL COPY

to Mortgagee immediately, without demand, and shall be deemed a part of the Indebtedness and secured hereunder.

ARTICLE 6 SECURITY AGREEMENT

Section 6.1 Security Interest. This Mortgage constitutes a "Security Agreement" on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements. To this end, Mortgagor grants to Mortgagee, a first and prior security interest in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements sent to Mortgagor at least five (5) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.2 Financing Statements. Mortgagor shall deliver to Mortgagee and hereby authorizes Mortgagee to file, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may, from time to time, reasonably consider necessary to create, perfect and preserve Mortgagee's security interest hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor's chief executive office is in the State at the address set forth in the first paragraph of this Mortgage.

Section 6.3 No Obligation of Mortgagee. The security interest herein granted shall in no event cause Mortgagee to be deemed or construed as a mortgagee in possession of the Mortgaged Property, to obligate Mortgagee to lease the Mortgaged Property or attempt to do so, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the Leases or otherwise.

Section 6.4 Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Mortgaged Property which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage.

Section 6.5 Continuing Effect Notwithstanding Termination of Mortgage. It is expressly agreed that until such time as the Indebtedness and Obligations have been paid and performed in full, or until the security interest granted hereby has been released in writing by Mortgagee, this Mortgage shall remain fully effective as a security agreement, notwithstanding that the lien on real property that is created by this Mortgage may be extinguished or released, by foreclosure of this Mortgage or otherwise.

ARTICLE 7 INTENTIONALLY OMITTED

UNOFFICIAL COPY

ARTICLE 8 MISCELLANEOUS

Section 8.1 Limitation on Interest. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Mortgagor and Mortgagee with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Mortgagee or charged by Mortgagee for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the state where the Mortgaged Property is located and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Indebtedness; and (b) if maturity is accelerated by reason of an election by Mortgagee, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Indebtedness. The Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of Texas, except that if at any time the laws of the United States of America permit Mortgagee to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of Texas (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Mortgagee may contract for, take, reserve, charge or receive under the Loan Documents.

Section 8.2 Notices. Any notice required or permitted to be given under this Mortgage shall be in writing and shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving party, or (d) sent by electronic mail. All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth in the first paragraph of this Mortgage.

Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first (1st) Business Day (as defined in the Note) after deposit with an overnight air courier service, (3) on the third (3rd) Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Mortgagor or Mortgagee, as the case may be, or (4) if given by electronic mail, when transmitted to the party's electronic mail address specified in the first paragraph of this Mortgage and no notice that such electronic mail is undeliverable is received) during normal

UNOFFICIAL COPY

business hours or on the next Business Day if sent after normal business hours. Either party may designate a change of address (x) by written notice to the other by giving at least ten (10) days prior written notice of such change of address, or (y) by changing such address in Mortgagor's account within Mortgagee's online portal (the "Portal"), which change will be effective when completed if completed during normal business hours or on the next Business Day if completed after normal business hours. Mortgagee may rely on Mortgagor's address as set forth in the Portal, and in the event of a conflict between the address set forth herein and in the Portal, the address in the Portal shall control.

Section 8.3 Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the party named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Loan Documents; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 8.4 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within ten (10) days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) if (i) Mortgagor fails to perform the covenants and agreements contained herein or in any of the other Loan Documents, (ii) there is a legal proceeding that might significantly affect Mortgagee's interest in the Mortgaged Property and/or rights herein or in any of the other Loan Documents, (iii) Mortgagor has abandoned the Mortgaged Property, or (iv) an Event of Default has occurred, to take any Action (hereinafter defined); however: (w) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (x) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (y) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (z) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section. As used herein, "Action" means any action or payment reasonable or appropriate to protect Mortgagee's interest in the Mortgaged Property or rights under the Loan Documents including, without limitation, paying any sums secured by or that may become secured by liens on the Mortgaged Property, appearing in court, and paying attorneys' fees to take any Action, including in a bankruptcy proceeding, obtaining insurance coverage required under the Loan Documents, entering the Mortgaged Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, prevent, comply

UNOFFICIAL COPY

with or eliminate building or other code violations or dangerous conditions, and have utilities turned on or off.

Section 8.5 Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 8.6 No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 8.7 Subrogation. To the extent proceeds of the Note have been used to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 8.8 Release or Reconveyance. Upon payment in full of the Indebtedness and performance in full of the Obligations, and provided Mortgagee has no further obligations to make any additional advances to Mortgagor under the Loan Documents, Mortgagee, at Mortgagor's expense, shall release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor, as applicable.

Section 8.9 Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 8.10 Obligations of Mortgagor, Joint and Several. If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 8.11 Governing Law. THIS MORTGAGE FOR ALL PURPOSES SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

Section 8.12 Jurisdiction. TO THE GREATEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY MORTGAGEE. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS MORTGAGE (EACH, A "PROCEEDING"), MORTGAGOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING

UNOFFICIAL COPY

JURISDICTION IN THE STATE OF ILLINOIS, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS MORTGAGE SHALL PRECLUDE MORTGAGEE FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION IN THE EXERCISE OF ITS SOLE DISCRETION, NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. MORTGAGOR FURTHER AGREES AND CONSENTS THAT ALL SERVICE OF PROCESS MAY BE MADE UPON MORTGAGOR IN ANY LEGAL PROCEEDING RELATING TO ANY OF THE LOAN DOCUMENTS BY ANY MEANS ALLOWED UNDER ILLINOIS OR FEDERAL LAW, AND ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY UNITED STATES DISTRICT COURT SITTING IN THE CITY OF CHICAGO AND COUNTY OF COOK SHALL BE WAIVED. MORTGAGOR SHALL BE SUBJECT TO SAID UNITED STATES DISTRICT COURT'S JURISDICTION FIVE (5) DAYS AFTER THE MAILING OF A COMPLAINT TO MORTGAGOR VIA REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

Section 8.13 Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 8.14 Entire Agreement. This Mortgage and the other Loan Documents embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior and contemporaneous agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 8.15 Counterparts. This Mortgage may be executed electronically and in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document. Signatures provided by facsimile or electronic transmission (including electronic .pdf copies) shall have the same force and effect as original signatures and shall be binding upon the parties.

Section 8.16 Additional Waivers. MORTGAGOR WAIVES ANY CLAIM OR DEFENSE TO ENFORCEMENT OF THE LOAN DOCUMENTS BASED ON THE EXCLUSION OF ANY GUARANTOR(S) FROM LITIGATION BASED ON SAID LOAN DOCUMENTS AGAINST THE MORTGAGOR. MORTGAGOR WAIVES (A) THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT HEREAFTER MAY BE ENACTED PROVIDING FOR ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, COMMONLY KNOWN AS APPRAISEMENT LAWS, (B) THE BENEFIT OF ALL LAWS THAT MAY HEREAFTER BE ENACTED IN ANY WAY EXTENDING THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF SAID INDEBTEDNESS OR

UNOFFICIAL COPY

CREATING OR EXTENDING A PERIOD OF REDEMPTION FROM ANY SALE MADE IN COLLECTING SAID INDEBTEDNESS, COMMONLY KNOWN AS STAY LAWS AND REDEMPTION LAWS, (C) THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT HEREAFTER MAY BE ENACTED PROVIDING FOR THE RIGHT TO OFFSET OR RELIEVE ANY DEFICIENCY BASED ON THE ALLEGED FAIR MARKET VALUE OF THE MORTGAGED PROPERTY AS OF THE DATE OF ANY FORECLOSURE SALE, COMMONLY KNOWN AS ANTI-DEFICIENCY LAWS, AND (D) THE BENEFIT OF ANY LAW ENACTED AFTER THE EXECUTION OF THIS MORTGAGE THAT REQUIRES THE PROVISION OF NOTICE OF DEFAULT TO MORTGAGOR PRIOR TO THE FILING OF ANY COMPLAINT RELATING TO THE MORTGAGE.

Section 8.17 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE, ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER OR IN ANY WAY RELATING TO THE LOAN OR THE MORTGAGED PROPERTY (INCLUDING ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS MORTGAGE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN.

Section 8.18 Recording and Filing. Mortgagor will cause the Loan Documents (requested by the Mortgagee) and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded, and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes documentary stamp taxes, fees, and other charges.

Section 8.19 Survival of Obligations. Each and all of the Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness shall have been paid in full; provided, however, that nothing contained in this Section 8.19 shall limit the obligations of Mortgagor as otherwise set forth herein.

[REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK]

UNOFFICIAL COPY

EXECUTED effective as of the date first above written.

MORTGAGOR:

The Brown Agency, LLC,
a(n) Illinois limited liability company

By: 

Name: Aftan Brown

Title: Member

STATE OF IL

COUNTY OF COOK

On the 11-23, 2023, before me, the undersigned, personally appeared Aftan Brown, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.




Notary Public

UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 11 IN BLOCK 8 IN VILLAGE OF PARK FOREST AREA NUMBER 1, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 35 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF SOUTH RIGHT OF WAY LINE OF ELGIN, JOLIET AND EASTERN RAILROAD, ALL IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 25, 1951 AS DOCUMENT 15107641.

32-30-208-011-0000

Property of Cook County Clerk's Office